

**COMMONWEALTH OF MASSACHUSETTS**

**SUFFOLK, ss.**

**BUILDING CODE APPEALS BOARD  
DOCKET NO.: 11-1012**

\_\_\_\_\_  
Rockwood Edwards,  
Appellant

v.

Marc Joseph,  
Appellees  
\_\_\_\_\_

**BOARD'S RULING ON APPEAL**

**Introduction**

This matter came before the State Building Code Appeals Board ("Board") on appellant's appeal filed pursuant to G.L. c.143, §100 and 780 CMR 122.1. In accordance with 780 CMR 122.3 the appellant petitioned the Board to make a determination based on the Eighth Edition of the Massachusetts State Building Code ("Code"). For the following reasons, the appellant will be granted a variance from the 780 CMR 705.8.1 prohibition on openings in fire walls constructed on lot lines between adjacent buildings which are used or adapted for joint service between the two buildings and from the 780 CMR 403.6.1 requirement that buildings more than 70 feet in height above grade plane have a minimum of one fire service access elevator.

The appellant requested that the Board grant a variance from the Code's allowable area of openings in exterior walls and from the Code's fire service access elevator requirement. Rockwood Edwards, James Gray, Richard Casner, James Eigerman, and Tom O'Donnell appeared on behalf of the appellant. All witnesses were duly sworn.

**Procedural History**

The Board convened a public hearing on July 7, 2011, in accordance with G.L. c. 30A, §§10 & 11; G.L. c. 143, §100; 801 CMR 1.02; and 780 CMR 122.3. All interested parties were provided with an opportunity to testify and present evidence to the Board.

**Findings of Fact**

The Board bases the following findings upon the testimony presented at the hearing. There is substantial evidence to support the following findings:

1. The property at issue is located at 319R A Street, South Boston, MA 02210.
2. The new building is a 21-story rental apartment building. It is primarily Use Group R, but also includes four levels of above grade parking and lobby space on the ground level.
3. The project began in 2007 and was approved by the Boston Redevelopment Authority in December 2010.

4. The north façade of the building faces an existing alley across from two existing buildings on Lot D and Lot E.
5. The centerline of the alley provides 13 feet of fire separation distance.
6. The west façade of the building is immediately adjacent to 319 A Street Front, an existing building.
7. 319 A Street Front is a historic building and additions to the height or number of stories of the building are significantly restricted.
8. The existing building and the new building have the same owner and have a real property line between them.
9. The east façade of the building faces the West Service Road.
10. The sliver of land located between the West Service Road and the building is owned by the United States Postal Service (USPS), but is in the process of being sold to the owner of 319 A Street Rear.
11. The south façade of the building faces the existing USPS property.
12. The fire separation distance to the centerline of the street is greater than 15 feet.
13. The south façade of the building has less than 75% exterior wall openings.
14. At the time the project began, there was no fire service access elevator requirement as part of the Code in place.
15. The Code changed in 2011 to require a fire services access elevator in all high-rise buildings.

## Analysis

### A. Jurisdiction of the Board

There is no question that the Board has jurisdiction to hear this case. The governing statute provides that:

Whoever is aggrieved by an interpretation, order, requirement, direction or failure to act by any state or local agency or any person or state or local agency charged with the administration or enforcement of the state building code or any of its rules and regulations, except any specialized codes as described in section ninety-six, may within forty-five days after the service of notice thereof appeal from such interpretation, order, requirement, direction, or failure to act to the appeals board. G.L. c.143 §100.

The issues giving rise to this matter directly implicate provisions of the Code. As such, this Board has jurisdiction to decide this case pursuant to G.L. c. 143, §100.

### B. State Building Code requirements

The issues in this case are whether the appellant shall be granted a variance from the 780 CMR 705.8.1 prohibition on openings in fire walls constructed on lot lines between adjacent buildings which are used or adapted for joint service between the two buildings and from the 780 CMR 403.6.1 requirement that buildings more than 70 feet in height above grade plane have a minimum of one fire service access elevator.

#### 1. Exterior Walls – Fire Resistance Rating and Fire Separation Distance

The appellant testified that the proposed 21-story building will replace an existing 5-story warehouse building and its west façade will be adjacent to a 5-story building. The appellant testified that both buildings are owned by the same party and that there are currently no plans to redevelop the 5-story building. The appellant testified that the issue is with the property line between the two buildings and proposed that they be treated as two buildings on the same site with a firewall separating them under the following conditions: (1) the firewall terminates at the underside of the roof sheathing, deck, or slab of the lower roof, (2) the lower roof assembly is one hour fire resistance rated within ten feet of the wall including the structure supporting the roof, and (3) no openings are provided within the lower roof within ten feet of the wall.

The appellant further testified that the east façade of the proposed building will be adjacent to an approximately 4,007 square foot piece of land that is owned by the United States Postal Service (“USPS”). The appellant testified that it is currently operating under a lease with the USPS to use that parcel of land and that a purchase and sale agreement is pending. The appellant proposed an approach that would assume that the land purchase will be completed and that the exterior wall openings are calculated based on the fire separation distance to the centerline of West Service Road, which would permit unlimited wall openings and allow the east façade to comply with the requirements of the Code.

The appellant further testified that the south façade of the proposed building will border USPS property which is currently being used as a parking lot. The appellant testified that there is a plan to create a new street which the south façade of the building will face, but that the street has not yet been built. The appellant proposed to assume the street condition for the elevation despite the fact that the USPS property is immediately adjacent. The appellant testified that the fire separation distance to the centerline of the street is greater than 15 feet which permits up to 75% exterior wall openings. The appellant further testified that the south elevation has less than 75% exterior wall openings and thus complies with the requirements of the Code.

## 2. Fire Service Access Elevator

The appellant testified that the fire service access elevator requirement was not a part of the Code at the time the project was approved by the Boston Redevelopment Authority in December 2010. The appellant further testified that the core and shell of the building were planned and developed with the understanding that there would be a ventilated vestibule smoke proof enclosure as part of the project. The appellant testified that the Code’s current requirement that a fire service access elevator be included in all high-rise buildings creates a hardship because it would cause changes to the exterior and because the project includes above grade parking with residential floors above and the optimum location for exist stairs in a residential project is different from that in a parking garage. The appellant proposed an alternative approach under which it will provide a smoke proof enclosure with a ventilated vestibule as was required under the 6<sup>th</sup> and 7<sup>th</sup> editions of the Code.

## Conclusion

A motion was made by Jacob Nunnemacher and seconded by Alexander MacLeod to (1) grant a variance from the 780 CMR 705.8.1 prohibition with respect to openings in fire walls constructed on lot lines between adjacent buildings which are used or adapted for joint service between the two buildings based on the appellant’s proposal and conditions placed on the building’s west façade, and (2) to grant a variance from the 780 CMR 403.6.1 requirement that buildings more than 70 feet in height above grade plane have a minimum of one fire service access elevator on the condition that the

smoke proof enclosure meet the requirements of the Code and because there was no opposition from Boston's Inspectional Services Department or Boston Fire. The motion passed. The appellant's request for variance is hereby granted.



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Alexander MacLeod

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Jacob Nunnemacher

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Doug Semple

*Any person aggrieved by a decision of the State Building Code Appeals Board may appeal to Superior Court in accordance with G.L. c.30A, §14 within 30 days of receipt of this decision.*

DATED: October 11, 2011